

**IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF WASHINGTON**

DANIEL B. SMITHSON,

No.

Plaintiff,

COMPLAINT

v.

*With Jury Demand*

DARYL JONATHAN HAMMOND,  
Washington State Department of Corrections  
(DOC) Probation Officer, J. DOE  
HAMMOND, and the marital community  
comprised thereof; SARAH LEWIS  
Supervisory Washington State Department of  
Corrections (DOC) Probation Officer, J. DOE  
LEWIS, and the marital community comprised  
thereof; AMBER SMITH, Washington State  
Department of Corrections (DOC) Probation  
Officer, J. DOE  
SMITH, and the marital community comprised  
thereof; RICHARD HENDRICKS,  
Washington State Department of Corrections  
(DOC) Probation Officer, J. DOE  
HENDRICKS, and the marital community  
comprised thereof; J. DOEs 1-5 Washington  
State Department of Corrections (DOC)  
Supervisory Officers, and the marital  
communities comprised thereof, ALEX  
McBAIN, Director & Supervisor of the  
Washington State Department of Corrections  
(DOC) J. DOE McBAIN, and the marital  
community comprised thereof;

Defendants.

COMES NOW the Plaintiff, DANIEL SMITHSON, through his attorneys of record, Kannin Law Firm P.S., and hereby presents the following claims:

**JURISDICTION**

1.

Jurisdiction is founded upon the existence of a federal question.

2.

This is an action to redress the deprivation under color of statute, ordinance, regulation, custom or usage of rights, privileges, and immunities secured to the plaintiff by the First, Fourth, and Fourteenth Amendments to the Constitution of the United States (42 U.S.C. § 1983).

3.

Jurisdiction is founded upon 28 U.S.C. § 1331 and § 1343(3) and (4).

4.

Venue is proper in the United States District Court of the Western District of Washington because the acts or omissions which for the basis of the Plaintiff's claims occurred in Pierce County, Washington and the defendants reside in Washington State

5.

At all times relevant to this complaint, Plaintiff was an individual residing in Pierce County, Washington.

6.

At all times referred to herein, Defendant Daryl J. Hammond DARYL J. HAMMOND,

1 Washington State Department of Corrections (DOC) Probation Officer was employed by the  
2 State of Washington and its Department of Corrections.

3 7.

4 At all times referred to herein, Defendant Sarah Lewis and J. DOE DOC supervisors 1-5  
5 were employed by the State of Washington and its Department of Corrections (DOC) as the  
6 Probation Supervisors for Defendant Hammond and other DOC Probation Officers and are  
7 believed to have been the supervising and commanding officers or authority of Defendant  
8 Hammond, a DOC probation officer.

9 8.

10 At all times referred to herein, Defendant Alex McBain was employed by the State of  
11 Washington and its Department of Corrections (DOC) as the Director of the Department of  
12 Corrections (DOC) to be its chief policy maker and supervisory authority of the Defendant  
13 Probation Supervisors Lewis, J. Does 1- 5 and Defendant Hammond and other DOC Probation  
14 Officers and employees.

15  
16 9.

17 Plaintiff sues the individual DOC Probation Defendants Officers Hammond, Smith,  
18 Hendricks and Lewis in their individual capacities and sues the supervisory Defendants John  
19 Doe Supervisors 1-5 and Alex McBain in in his or her individual and official capacities. At all  
20 times relevant to this complaint the Defendants were acting within the scope of their employment  
21 as employees of the State of Washington and its Department of Corrections and were acting  
22 under color of law.

23  
24 **FACTS**

25 10.

1 On January 22, 2019, Plaintiff Smithson was at the Washington State Department of  
2 Corrections (DOC) Office, 514 S 13th St, Tacoma, Washington 98402 in Pierce County.  
3 Smithson was there for a scheduled meeting with his DOC probation officer Defendant Daryl J.  
4 Hammond. Smithson was on DOC probation after pleading guilty to felony assault and drug  
5 crimes by way of a no contest, or *Alford* plea. Plaintiff Smithson was permanently disabled after  
6 suffering a traumatic brain injury in 2014. At the January 22, 2019 meeting, sometime after  
7 11:00 a.m., Defendant Hammond ordered Plaintiff Daniel Smithson to provide a urinalysis  
8 sample for random drug testing. No one else at the DOC office knew Hammond ordered  
9 Smithson to provide a urine sample for testing. Smithson complied and went with Hammond  
10 into the restroom at the DOC Tacoma office. No one else from the DOC went with Hammond  
11 and Smithson for the urine specimen collection. Smithson proceeded to the toilet area to provide  
12 the urine specimen as instructed. Defendant Hammond was behind Plaintiff Smithson. No one  
13 else was with Hammond and Smithson in the restroom. Defendant Hammond and Plaintiff  
14 Smithson exchanged words. Defendant Hammond pushed Plaintiff Smithson into the wall of the  
15 restroom. Smithson turned to face Hammond. Defendant Officer Hammond punched Plaintiff  
16 Smithson in the face. Defendant Hammond instructed Smithson to get down onto the floor.  
17 Smithson complied. As Smithson was on the floor face down Hammond told Smithson to put  
18 his hands behind his back for what Smithson thought was handcuffing. Smithson complied.  
19 Defendant Hammond pulled Smithson's arms and hands further behind Smithson's back. When  
20 Defendant Hammond pulled Smithson's arms and hands behind Smithson's back, Hammond  
21 used such force that Hammond broke bones in Plaintiff Smithson's right hand and wrist. When  
22 Hammond broke Smithson's hand and wrist Smithson yelled out. Defendants Sarah Lewis and  
23 Defendant Amber Smith came into the DOC restroom. Plaintiff Smithson told Defendant  
24  
25  
26

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1 Hammond and the other Defendants that Hammond had injured Smithson's right hand/wrist and  
2 arm. Defendant Smith put handcuffs on Smithson and used the handcuffs to lock Plaintiff  
3 Smithson's broken hand and wrists together behind his back.

4 11.

5 Defendant Lewis along with another DOC probation officer, believed to be Defendant  
6 Hendricks, took Plaintiff Smithson to the St. Joseph's hospital in Tacoma, Washington. Once at  
7 the hospital Plaintiff Smithson was admitted into the Emergency Department at the CHI  
8 Franciscan Health St. Joseph's Medical Center in Tacoma, Washington.

9 12.

10  
11 At St. Joseph's Medical Center Doctors and medical staff treated Plaintiff Smithson for  
12 his injuries caused by the Defendants. Smithson's physicians diagnosed him as having suffered  
13 contusions of the face caused by a blow/blunt force trauma to Plaintiff Smithson's head/face.  
14 Smithson's physicians also diagnosed him as having a fracture of the metacarpal bone and  
15 fracture of hamate bone of the right wrist caused by Defendant Hammond forcing Smithson's  
16 hand and wrist behind his back. The subsequent handcuffing by Defendant Smith is believed to  
17 have aggravated Plaintiff's injuries. After triage Plaintiff Smithson was treated at the St. Joseph's  
18 hospital. The doctors and medical staff treated Smithson for injuries to his face and right arm and  
19 hand. They put a cast on Smithson's right arm. Defendant Lewis along with another DOC  
20 probation officer believed to be Defendant Richard Hendricks took Plaintiff Smithson from the  
21 St. Joseph's hospital in Tacoma, Washington to a jail in Nisqually, Washington. Defendant  
22 Lewis and Hendricks caused Plaintiff to be booked into the Nisqually jail. There was no  
23 probation violation hearing held nor was the Pierce County Superior Court ever involved in the  
24 detention and imprisonment of Plaintiff Smithson at the Nisqually jail. Plaintiff Smithson was  
25 never informed as to why he was arrested and detained in jail. Defendants kept Plaintiff

26 COMPLAINT - Page 5

1 Smithson incarcerated at the Nisqually jail for approximately two weeks. Plaintiff Smithson was  
2 in pain from his injuries caused by the Defendants when he was a prisoner at the Nisqually jail.  
3 There was no medical treatment for Plaintiff Smithson at the Nisqually jail. Plaintiff Smithson was  
4 eventually released from the Nisqually jail. Upon his release Defendant Lewis and Hendricks  
5 took Plaintiff Smithson to the Olympic Orthopedic Urgent Care Clinic in Thurston County,  
6 Washington. At the clinic medical doctors anesthetized Plaintiff Smithson and Gregory Byrd,  
7 M.D., performed surgery on Smithson's right arm and hand.

8 13.

9 After the surgery Defendant Lewis and Hendricks drove Plaintiff from the urgent care  
10 clinic in Thurston County to the Washington State Correctional Facility (Prison) at Monroe,  
11 Washington. The Defendants caused Plaintiff Smithson to be held in custody at the prison in  
12 Monroe for about two weeks. There was no probation violation hearing held nor was the Pierce  
13 County Superior Court involved in ordering the detention and imprisonment of Plaintiff  
14 Smithson at the DOC correctional facility in Monroe, Washington. Plaintiff Smithson was  
15 eventually released from the State prison at Monroe, Washington. Two DOC employees drove  
16 Plaintiff Smithson from the State prison at Monroe to the Nisqually jail in Thurston County,  
17 Washington. Smithson was kept in custody at the Nisqually for several days. He was eventually  
18 released. Nisqually jail employees gave Plaintiff Smithson \$20.00 in cash and bus schedule and  
19 released him from the jail so that he could return home. Plaintiff Smithson was living at 2031 S  
20 8th St Tacoma WA 98405 when he was detained, injured and arrested on January 22, 2019.

21  
22 After Plaintiff Smithson was discharged from the Nisqually. Plaintiff's physicians  
23 continued to provide medical treatment to Plaintiff for the injuries caused by the Defendants.  
24  
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1 Plaintiff Smithson underwent a painful course of physical therapy that caused him to further  
2 suffer as a direct result of the Defendants' acts. Plaintiff's right wrist has not fully recovered,  
3 there is a loss of function and range of motion. Plaintiff is permanently partially disabled as a  
4 direct result of the Defendants' acts and/or failures to act. Plaintiff expects to incur future  
5 medical expenses for the treatment of his right hand and wrist.

6  
7 14.

8 After Defendant Daryl J. Hammond and Amber Smith injured Plaintiff Smithson on  
9 January 22, 2019, neither the State of Washington nor the Washington State Department of  
10 Corrections charged Plaintiff Smithson with violating the conditions of his probation. There was  
11 no probation violation hearing held nor was the Pierce County Superior Court ever involved in  
12 the detention and imprisonment of Plaintiff Smithson.

13 15.

14 On January 22, 2019, Defendant Sarah Lewis the supervising DOC officer and manager  
15 at the Washington State Department of Corrections responsible for supervising Defendant  
16 Hammond. As the supervising officer and supervising authority of Defendant Daryl Hammond,  
17 she was the DOC employee responsible for training and supervising Defendant Hammond and  
18 ensuring the DOC policies for supervising detainees subject to DOC probation were  
19 implemented and followed. On January 22, 2019, Defendant J. Does 1- 5 were the supervising  
20 DOC officers and managers at the Washington State Department of Corrections responsible for  
21 supervising Defendant Hammond and Defendant Lewis and Defendant Smith and Defendant  
22 Hendricks. As the supervising officers and supervising authority of Defendant DOC officers  
23 Hammond, Lewis, Smith, and Hendricks the Defendant J. Does 1- 5 were the DOC employees  
24 responsible for training and supervising Defendants Hammond, Lewis, Smith and Hendricks, and  
25

1 ensuring the DOC policies for supervising detainees subject to DOC probation were  
2 implemented and followed. Defendant On January 22, 2019, Defendant Alex McBain was  
3 employed by the State of Washington and its Department of Corrections (DOC) as the Director  
4 of the Department of Corrections (DOC) to be its chief policy maker and supervisory authority  
5 of the Defendant Probation Supervisors Lewis, and J. Does 1- 5 Supervisors. Defendant McBain  
6 was the State of Washington employee responsible for ensuring the policies, practices and  
7 customs that the DOC officers under his command, which included Defendant Daryl Hammond,  
8 Lewis, Smith and Hendricks, did not violated the clearly established constitutional rights of the  
9 DOC detainees under their control and further responsible to ensure that the DOC officers were  
10 adequately and lawfully trained and supervised when carrying out their duties on behalf of the  
11 Washington State Department of Corrections in conformity with the policies made by Defendant  
12 McBain.  
13

14 16.

15 The Defendants caused Plaintiff Smithson to suffer painful disabling injuries to his  
16 person/body that required the expenditure of money for medical care and treatment of his  
17 injuries. The Defendants' acts caused Plaintiff Smithson to suffer serious permanent disabling  
18 injuries. Plaintiff Smithson underwent medical treatment for his injuries. Plaintiff Smithson  
19 anticipates additional medical treatment to be necessary for his injuries caused by the  
20 Defendants' acts and failures to act. Plaintiff Smithson's injuries were and are painful,  
21 permanent, disabling, and disfiguring. Plaintiff Smithson suffered a loss of enjoyment of his life  
22 as a direct result of what the Defendants did and failed to do. Plaintiff Smithson continues to  
23 suffer from his injuries caused by the Defendants.  
24



17.

The Defendants' acts and failure to act impaired Plaintiff Smithson's ability to earn wages. As a direct result Plaintiff Smithson anticipates future lost wages caused by the Defendants.

18.

Defendant McBain is believed to be the Washington State Department of Corrections (DOC) chief policy maker regarding implementing the Washington State Department of Corrections (DOC) use of force policies, practices and customs and the management of urinalysis testing policies, practices and customs for DOC detainees. He is further believed to be Washington State Department of Corrections representative who ultimately approved, and/or ratified the Defendant Hammonds' use of force and testing procedures in this case. Defendant McBain is further believed to be Washington State Department of Corrections chief policy maker regarding implementing the Washington State Department of Corrections employees policies, practices and customs for use of force policies, practices and customs and the management of urinalysis testing policies, practices and customs for DOC detainees. In determining and implementing the Department of Corrections policies, he is believed to rely upon the assistance of, and policy making, development and implementation of other John and Jane Doe Washington State Department of Corrections supervisory employees, Defendants J. Does 1- 5.

19.

As a direct and proximate result of the said acts of the defendants the plaintiff Daniel Smithson suffered the following injuries and damages:

1 a. Violation of his constitutional rights under the Fourth, Fifth, Eighth, and Fourteenth  
2 Amendments to the United States Constitution;

3 b. Physical pain and suffering requiring the expenditure of money for treatment;

4 c. Economic and non-economic damages incurred and expected to be incurred, in an  
5 amount to be established at trial.

6 20.

7 The actions of the defendants further violated the following clearly established and well-  
8 settled federal constitutional rights of Daniel Smithson:

9 a. Right to freedom from the use of excessive and unreasonable force  
10 against his person.

11 b. Right to freedom from the unlawful seizure of his person.

12 c. Right to not be deprived of life and liberty and property without due process of  
13 law.

14 d. Right to not be held in custody such that it was cruel and unusual punishment.  
15  
16  
17

18 **FIRST CLAIM UNDER 42 U.S.C § 1983 AGAINST DEFENDANT WASHINGTON**  
19 **DEPARTMENT OF CORRECTIONS PROBATION OFFICER DARYL HAMMOND IN**  
20 **HIS INDIVIDUAL CAPACITY VIOLATION OF PLAINTIFF'S FOURTH AND**  
21 **FOURTEENTH AMENDMENT RIGHTS**  
22 **(EXCESSIVE FORCE)**

23 21.

24 Plaintiff re-alleges paragraphs 1 through 20 above.

25 22.

26 42 U.S.C. § 1983 provides in part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage of  
COMPLAINT - Page 10

any State or Territory subjects, or causes to be subjected, any person of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law, suit at equity or other proper proceeding for redress.

23.

Plaintiff Smithson had a firmly established right under the Fourth Amendment forbidding unlawful and unreasonable seizure and granting him the rights to be free from physical abuse, excessive force, and the use of force to cause him to suffer bodily injuries as well as a firmly established right to be free from excessive force being used against him to detain him, search him or seize and arrest him.

24.

At all times material herein, defendant Daryl Hammond acting under color of state law, had a duty to refrain from depriving plaintiff Smithson of his constitutional rights. Defendant Hammond breached his aforementioned duty to refrain from depriving plaintiff of his constitutional rights by using unreasonably excessive force, to punch Smithson in the face and to use a purported handcuff technique to detain Smithson, on January 22, 2019 such that Defendant Hammond broke bones in Plaintiff's hand and wrist all of which constituted a violation of plaintiff's clearly established rights under the Fourth and Fourteenth Amendments to the Constitution of the United States, forbidding unlawful and unreasonable seizure of his person.

25.

At the time they breached their duties to plaintiff defendant Hammond acted under color of law and was employed by the Washington State Department of Corrections (DOC).

26.

Plaintiff was subjected to physical injury, pain, and fear by the illegal acts of defendants and claims damages, attorney fees, and punitive damages for the injuries set forth herein under 42 U.S.C. § 1983 against Defendant Hammond for violation of his constitutional rights under color of law in an amount to be proven at trial.

27.

The conduct of the defendants was knowing, intentional, and malicious, by reason of which plaintiff is entitled to punitive damages.

**SECOND CLAIM: UNDER 42 U.S.C § 1983 AGAINST DEFENDANT WASHINGTON  
DEPARTMENT OF CORRECTIONS PROBATION OFFICER DARYL HAMMOND IN  
HIS INDIVIDUAL CAPACITY & DEFENDANT AMBER SMITH IN HER INDIVIDUAL  
CAPACITY VIOLATION OF PLAINTIFF'S EIGHTH AND FOURTEENTH  
AMENDMENT RIGHTS  
(CRUEL AND UNUSUAL PUNISHMENT)**

28.

Plaintiff realleges paragraphs 1 through 27 above.

29.

42 U.S.C. § 1983 provides in part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory subjects, or causes to be subjected, any person of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law, suit at equity or other proper proceeding for redress.

30.

1 Plaintiff Smithson had a firmly established right under the Fourth Amendment forbidding  
 2 unlawful and unreasonable seizure and granting him the rights to be free from physical abuse,  
 3 excessive force, and the use of force to cause him to suffer bodily injuries as well as a firmly  
 4 established right to be free from excessive force being used against him to detain him, search  
 5 him or seize him.

6 31.

7 At all times material herein, defendant Daryl Hammond and Defendant Amber Smith  
 8 acting under color of state law, had a duty to refrain from depriving plaintiff Smithson of his  
 9 constitutional rights. Defendant Hammond breached his aforementioned duty to refrain from  
 10 depriving plaintiff of his constitutional rights on January 22, 2019 by using unreasonably  
 11 excessive force to punish Plaintiff Smithson, punching Smithson in the face and using force to  
 12 break bones in Plaintiff's hand and wrist, when Plaintiff Smithson was a person detained and  
 13 under the control of defendant Hammond, on January 22, 2019, and Defendant Smithson  
 14 handcuffed Smithson after Defendant Hammond broke bones in Plaintiff's right hand and wrist  
 15 all of which constituted a violation of plaintiff's clearly-established rights under the Eighth and  
 16 Fourteenth Amendments to the Constitution of the United States, forbidding cruel and unusual  
 17 punishments when in State custody

18 32.

19 At the time they breached their duties to plaintiff defendant Daryl Hammond and  
 20 defendant Amber Smith acted under color of law and was employed by the Washington State  
 21 Department of Corrections (DOC).

22 33.

23 Plaintiff was subjected to physical injury, pain, and fear by the illegal acts of defendants  
 24 and claims damages, attorney fees, and punitive damages for the injuries set forth herein under  
 25 42 U.S.C. § 1983 against Defendant Hammond for violation of his constitutional rights under

26 COMPLAINT - Page 13

1 color of law in an amount to be proven at trial.

2 34.

3 The conduct of the Defendants was knowing, intentional, and malicious, by reason of  
4 which Plaintiff is entitled to punitive damages.

5  
6 **THIRD CLAIM: UNDER 42 U.S.C § 1983 AGAINST DEFENDANT WASHINGTON**  
7 **DEPARTMENT OF CORRECTIONS PROBATION OFFICER DARYL HAMMOND,**  
8 **DEFENDANT SARAH LEWIS, DEFENDANT AMBER SMITH, DEFENDANT**  
9 **RICHARD HENDRICKS IN THEIR INDIVIDUAL CAPACITIES FOR VIOLATION**  
10 **OF FOURTH, FIFTH, EIGHTH, AND FOURTEENTH AMENDMENT RIGHTS**  
11 **(ARREST AND IMPRISONMENT WITHOUT A HEARING, NO DUE PROCESS & NO**  
12 **PROBABLE CAUSE TO ARREST FOR A PROBATION VIOLATION)**

13 35.

14 Plaintiff re-alleges paragraphs 1 through 34 above.

15 36.

16 42 U.S.C. § 1983 provides in part:

17 Every person who, under color of any statute, ordinance, regulation, custom, or usage of  
18 any State or Territory subjects, or causes to be subjected, any person of the United States  
19 or other person within the jurisdiction thereof to the deprivation of any rights, privileges,  
20 or immunities secured by the Constitution and laws shall be liable to the party injured in  
21 an action at law, suit at equity or other proper proceeding for redress.

22 37.

23 Plaintiff Smithson had firmly established rights under the Fourth Amendment forbidding  
24 unlawful and unreasonable seizure of his person granting him the rights to be free from being  
25 arrested and imprisoned without a warrant and without probable cause that plaintiff Smithson  
26 had committed a probation violation.

38.

At all times material herein, defendants Daryl Hammond, Sara Lewis, Amber Smith, and

1 Richard Hendricks, acting under color of state law, had a duty to refrain from depriving plaintiff  
2 Smithson of his constitutional rights. Defendants Daryl Hammond Sara Lewis, Amber Smith,  
3 and Richard Hendricks, breached the aforementioned statute and breached their legal duties to  
4 refrain from depriving plaintiff of his constitutional rights by illegally arresting plaintiff  
5 Smithson without a warrant and/or without probable cause that Smithson had violated the  
6 conditions of his probation, on January 22, 2019, which constituted a violation of plaintiff's  
7 clearly-established rights under the Fourth and Fourteenth Amendments to the Constitution of  
8 the United States, forbidding unlawful and unreasonable seizures.

9 39.

10 At all times material herein, defendants Daryl Hammond, Sara Lewis, Amber Smith, and  
11 Richard Hendricks, acting under color of state law, had a duty to refrain from depriving plaintiff  
12 Smithson of his constitutional rights. Defendants Daryl Hammond, Sara Lewis, Amber Smith,  
13 and Richard Hendricks breached the aforementioned statute and breached their legal duties to  
14 refrain from depriving plaintiff of his constitutional rights by putting him in jail without a  
15 hearing and without a court order that he be incarcerated for violating the conditions of his  
16 sentence and/or probation, which constituted a violation of plaintiff's clearly-established rights  
17 under the Fourth, Fifth, Eight and Fourteenth Amendments to the Constitution of the United  
18 States.

19  
20 40.

21 At the time they breached their duties to plaintiff Daryl Hammond, Sara Lewis, Amber  
22 Smith, and Richard Hendricks acted under color of law and were employed by the Washington  
23 State Department of Corrections (DOC).

24  
25 41.

26 COMPLAINT - Page 15

Defendants' acts and failures to act caused plaintiff to suffer physical injury, pain, humiliation, and fear as a direct and proximate result of the defendants' acts and failures to act and hereby claims damages for the injuries set forth herein under 42 U.S.C. § 1983 against defendants Daryl Hammond, Sara Lewis, Amber Smith, and Richard Hendricks for violation of his constitutional rights under color of law, in amount to be proven at trial.

42.

The conduct of the defendants was knowing, intentional, reckless, and/or malicious, by reason of which plaintiff is entitled to punitive damages.

**UNDER 42 U.S.C § 1983 AGAINST DOC CHIEF POLICY MAKER ALEX McBAIN & J. DOES 1 – 5 WASHINGTON STATE DEPARTMENT OF CORRECTION (DOC) SUPERVISORY POLICY MAKERS IN THEIR INDIVIDUAL AND OFFICIAL CAPACITIES AS SUPERVISORS AND POLICY MAKERS FOR VIOLATION OF PLAINTIFF'S FOURTH, FIFTH, EIGHTH AND FOURTEENTH AMENDMENT RIGHTS ( UNCONSTITUTIONAL POLICY PRACTICE OR CUSTOM)**

43.

Plaintiff realleges paragraphs 1 through 42 above.

44.

Prior to January 22, 2019 Defendant Alex McBain, Defendants John Does 1 – 5 Washington State Department of Corrections (DOC) Supervisors, developed and maintained policies, practices, or customs, by and through Defendant Daryl Hammond, Defendant Lewis, Defendant Smith, Defendant Hendricks, its Correction's Department Probation Officer and other DOC officers whose identities are presently unknown, exhibiting deliberate indifference to the constitutional rights of persons in the custody of Washington State DOC, which caused the



1 violation of Plaintiff Smithson's rights.

2 45.

3 At the time of the incident involving plaintiff Smithson it is believed that it was the  
 4 policy, practice, or custom of Defendant Alex McBain and Defendants John Does 1 – 5  
 5 Washington State Department of Corrections (DOC) Supervisors to fail to ensure the DOC  
 6 employees under their supervision did not unlawfully assault, injure, improperly test, and/or  
 7 punish DOC detainees under their employees' supervision, and further not having adequate  
 8 screening of probation officer candidates during the hiring process, or adequate training,  
 9 supervision, and not having discipline of probation officers after they were hired. Defendants  
 10 McBain and John Does 1 – 5 Washington State Department of Corrections (DOC) Supervisors  
 11 did not require appropriate in-service training or retraining of officers who violated the plaintiff's  
 12 aforementioned rights. Defendants McBain and John Does 1 – 5 Washington State Department  
 13 of Corrections (DOC) Supervisors did not require appropriate in-service training or retraining of  
 14 DOC officers who were known to have engaged in misconduct. Defendants McBain and John  
 15 Does 1 – 5 Washington State Department of Corrections (DOC) Supervisors did not  
 16 appropriately discipline its DOC officers who were known to have engaged in misconduct.  
 17 Upon information and belief, the Defendants McBain and John Does 1 – 5 Washington State  
 18 Department of Corrections (DOC) Supervisors knew or should have known of the propensities of  
 19 Defendant Daryl Hammond, Amber Smith, Richard Hendricks and Sarah Lewis to perform an  
 20 unlawful assault, excessive force, improper testing, arrest, detention and incarceration without a  
 21 hearing or court order, and cruel and unusual punishment but took no steps to train, correct the  
 22 Defendant's abuse of authority, or discourage their unlawful use of authority.

23 46.

24 As a result of the above-described policies, practices, and customs, DOC probation

25 COMPLAINT - Page 17

1 officers, including Defendant officers Hammond, Amber Smith, Richard Hendricks and Sarah  
 2 Lewis believed that their actions or inactions would not be properly monitored by supervisory  
 3 officers and that the Defendant officer's misconduct would not be investigated or sanctioned but  
 4 would be tolerated and/or ratified by Defendants Alex McBain and John Does 1 – 5 Washington  
 5 State Department of Corrections (DOC) Supervisors.

6 47.

7 The above-described policies, practices, and customs of Defendants Alex McBain and  
 8 John Does 1 – 5 Washington State Department of Corrections (DOC) Supervisors demonstrated  
 9 indifference to the constitutional rights of persons within Washington State Department of  
 10 Corrections (DOC) and were a cause of the violations of Plaintiff's Fourth, Eighth, and  
 11 Fourteenth Amendment rights, as alleged herein.

12 48.

13 Plaintiff Smithson claims damages for the injuries set forth above under 42 U.S.C. § 1983  
 14 against Defendants Alex McBain and John Does 1 – 5 Washington State Department of  
 15 Corrections (DOC) Supervisors for violation of his constitutional rights under color of law in an  
 16 amount to be proven at trial.

17 **FIFTH CLAIM: VIOLATION OF TITLE II OF 42 U.S.C. § 12131 - § 12134 OF THE**  
 18 **AMERICANS WITH DISABILITIES ACT (ADA), REASONABLE**  
 19 **ACCOMMODATION, AGAINST DEFENDANTS SARAH LEWIS, DEFENDANT**  
 20 **AMBER SMITH, DEFENDANT RICHARD HENDRICKS AND SUPERVISORS ALEX**  
**McBAIN AND J. DOE 1 – 5.**

21 49.

22 Plaintiff re-alleges paragraphs 1 through 48 above.

23 50.

24 Subject to the provisions of 42 U.S. Code § 12132, no qualified individual with a  
 25 disability shall, by reason of such disability, be excluded from participation in or be denied the

benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. This law, the ADA, applies to all the operations of a public entity probation department, including arrests, detentions and physical/medical testing.

51.

Defendants knew that plaintiff Smithson was disabled, and that as a result of his disability, a traumatic brain injury, Smithson's cognitive function was delayed, and that plaintiff Smithson was likely to need a special accommodation.

52.

Since the defendants knew or reasonably should have known that plaintiff Smithson was disabled, and thus was a qualified individual in accordance with 42 U.S. Code § 12131 (2), at all times material herein, defendants Hammond, Lewis, Smith, and Hendricks along with chief policy maker and supervisor Defendant Alex McBain and J. Doe Supervisors 1- 5 all had Doe had a duty to make reasonable modifications or accommodations, and policies that allowed for them, when testing, interviewing, detaining, and/or arresting and imprisoning an individual with a disability or whom they reasonably believe had a disability, and thee supervisory authority defendant Alex McBain and J.Does 1- 5 had a further duty to ensure that the organization under his policy making control, the Washington State Department of Corrections has reasonable policies practices and customs to make reasonable accommodations or modifications when testing, interviewing, detaining, and/or arresting and imprisoning an individual with a disability or whom they reasonably believe had a disability, and defendant Alex McBain and J.Does 1- 5 had a duty to ensure the employees under his supervision made reasonable modifications when detaining, testing, arresting and jailing an individual with a disability or whom they reasonably believe had a disability.

53.

Defendants Hammond, Lewis, Smith, and Hendricks along with chief policy maker and supervisor Defendant Alex McBain and J. Doe Supervisors 1- 5 failed to make a reasonable modification when arresting and/or seizing, testing, and jailing, plaintiff Smithson an individual with a disability or whom they reasonably believe had a disability. Defendants thereby by violated the Americans with Disabilities Act (ADA) 42 U.S.C. § 12131 - § 12134 and are liable to plaintiff Smithson.

54.

Plaintiff Smithson claims damages for the injuries set forth above under 42 U.S.C. § 12131 - § 12134 against defendants Hammond, Lewis, Smith, and Hendricks along with chief policy maker and supervisor Defendant Alex McBain and J. Doe Supervisors 1- 5 in an amount to be proven at trial.

### **JURY DEMAND**

The Plaintiff Daniel Smithson respectfully requests trial by jury.

### **RELIEF REQUESTED**

WHEREFORE, the Plaintiff prays for judgment in an amount to be established at trial, including:


- a. Economic damages to Plaintiff against the Defendants jointly and severally;
- b. Non-economic damages to Plaintiff against the Defendants jointly and severally;
- c. Reasonable attorney's fees and costs to the plaintiff under 42 U.S.C. § 1988 and 42 U.S.C. §12205;

1 d. Punitive damages; and

2 e. Such other relief as this court may deem equitable.

3  
4 DATED this 14<sup>th</sup> day of January 2022.

5 KANNIN LAW FIRM P.S.

6  
7 By:   
8 John Kannin, WSBA #27315  
9 Attorney for Plaintiff  
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